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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

प्रिया

प्रभाग
ए० बि० एम्स

LOK SABHA

The following Bill was introduced in Lok Sabha on 13th March, 2008.

BILL No. 28 OF 2008

*A Bill further to amend the Forward Contracts (Regulation) Act, 1952 and the
Securities and Exchange Board of India Act, 1992.*

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Forward Contracts (Regulation) Amendment Act, 2008. Short title and commencement.

(2) It shall be deemed to have come into force on the 31st day of January, 2008.

CHAPTER II

AMENDMENTS TO THE FORWARD CONTRACTS (REGULATION) ACT, 1952

Amendment
of long title.

2. In the Forward Contracts (Regulation) Act, 1952 (hereafter in this Chapter referred to as the principal Act), in the long title, for the words "the prohibition of options in goods", the words "and to promote the development of and to regulate, the commodity derivatives market" shall be substituted. 74 of 1952.

Amendment
of section 2.

3. In section 2 of the principal Act,—

(i) for clause (a), the following clauses shall be substituted, namely:—

'(a) "Appellate Tribunal" means the Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

'(aa) "association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative;

'(ab) "Chairman" means the Chairman of the Commission referred to in clause (a) of sub-section (1) of section 3A;';

(ii) after clause (b), the following clauses shall be inserted, namely:—

'(ba) "commodity derivative" means—

(i) a contract for delivery of goods, which is not a ready delivery contract; or

(ii) a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Commission by the Central Government, but does not include securities;

'(bb) "corporatisation" means the succession of a recognised association, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another association, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in goods or commodity derivatives carried on by such individuals or society; 21 of 1860.

'(bc) "demutualisation" means the segregation of ownership and management from the trading rights of the members of a recognised association in accordance with a scheme approved by the Commission;';

(iii) in clause (c), after the words "delivery contract", the words "and includes contract for commodity derivative" shall be inserted;

(iv) after clause (c), the following clause shall be inserted, namely:—

'(ca) "Fund" means the Forward Markets Commission General Fund constituted under sub-section (1) of section 4E;';

(v) after clause (e), the following clauses shall be inserted, namely:—

'(ea) "intermediary" means a member of the association, and includes a collateral manager, a clearing house, or such other person who is associated with the commodity derivatives market and is specified as such by the Central Government for the purposes of this Act;

'(eb) "member" means a whole-time or part-time member of the Commission and includes the Chairman;';

(vi) after clause (f), the following clauses shall be inserted, namely:—

'(fa) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

'(fb) "option in commodity derivative" means an agreement, by whatever name called, for trading in a commodity derivative and includes a *teji*, a *mandi*, a *teji-mandi*, a *gali*, a put, a call or a put and call in commodity derivative;';

(vii) in clause (i),—

(A) for the words "eleven days", the words "thirty days" shall be substituted;

(B) in the *Explanation*, in clause (i), after the word and figures "Act, 1970", the words, figures and brackets "or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" shall be inserted;

(viii) in clause (j), for the words and figure "the Central Government under section 6 in respect of goods or classes of goods", the words and figure "the Commission under section 6 in respect of forward contract or classes of forward contracts" shall be substituted;

(ix) for clause (jj), the following clause shall be substituted, namely:—

'(jj) "regulations" means the regulations made by the Commission under this Act;';

(x) after clause (k), the following clause shall be inserted, namely:—

'(ka) "scheme" means a scheme for corporatisation or demutualisation of a recognised association which may provide for—

(A) the issue of shares for a lawful consideration and provision for trading rights in lieu of membership cards of members of a recognised association;

(B) the restrictions on voting rights;

(C) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised association, legal proceedings by, or against, the recognised association, whether in the name of the recognised association or any trustee or otherwise and any permission given to, or by, the recognised association;

(D) the transfer of employees of a recognised association to another recognised association;

(E) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised association;';

(xi) in clause (m), for the words "forward contract which provides for", the words "forward contract which provides for, and is performed by," shall be substituted.

4. In section 3 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-section shall be substituted, namely:—

"(2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued."

Amendment
of section 3.

Insertion of new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H.

Management of Commission.

5. After section 3 of the principal Act, the following sections shall be inserted, namely:—

"3A. (1) The Commission shall consist of the following members, namely:—

(a) a Chairman;

(b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;

(c) one member from amongst the officials of the Reserve Bank;

(d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission:

Provided that every person appointed as Chairman and every other person appointed as member of the Commission and holding office as such immediately before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, shall, notwithstanding any order for their appointment made under sub-section (2) of section 3 as it stood before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, shall hold office till the Chairman or other member has been appointed in accordance with this section after such commencement and no person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

3B. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 3A shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 3A, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the

Term of office and conditions of service of Chairman and members of Commission.

expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

3C. The Central Government shall remove a member from office if he—

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

3D. (1) The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings including quorum at such meetings as may be provided by regulations.

Removal of member from office.

Meetings of Commission.

(2) The Chairman or, if for any reason he is unable to attend the meeting of the Commission, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the members of the Commission present and voting, and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

3E. No act or proceeding of the Commission shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as a member of the Commission; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of Commission.

3F. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Commission, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Commission, and the member shall not take any part in any deliberation or decision of the Commission with respect to that matter.

Member not to participate in meetings in certain cases.

3G. The Chairman and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept any employment with any person dealing with the commodities derivatives or with any intermediary.

Bar on future employment of members.

3H. (1) The Commission may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

Officers and employees of Commission.

(2) The terms and conditions of service of the officers and employees of the Commission appointed under sub-section (1) shall be such as may be determined by regulations:

Provided that every officer and other employee holding any office under the Commission, before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, shall continue to hold his office as such after such commencement for the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the said Act had not come into force and shall continue to do so as an officer or other employee of the Commission until the regulations are made under this sub-section or the expiry of one year from the date of such commencement or till the date on which such officer or other employee opts not to be the officer or other employee of the Commission, whichever is earlier.".

Amendment
of section 4.

6. In section 4 of the principal Act,—

(a) for clause (a), the following clauses shall be substituted, namely:—

"(a) to advise the Central Government in respect of matters arising out of the administration of this Act;

(aa) to grant or withdraw recognition of any association;";

(b) in clause (e), for the words "registered association or any member of such association", the words "any member of such association or any intermediary" shall be substituted;

(c) for clause (f), the following clauses shall be substituted, namely:—

"(f) to regulate the business of the associations;

(g) to regulate the functioning of members of the associations, clearing houses, warehouses and intermediaries;

(h) to levy fees for carrying out the purposes of this Act;

(i) to conduct research for the purpose of development and regulation of commodity derivatives market;

(j) to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions;

(k) to protect the interests of the market participants in commodity derivatives markets;

(l) to promote and regulate self-regulatory organisations;

(m) to prohibit fraudulent and unfair trade practices relating to commodity derivatives markets;

(n) to promote investors' education and training of intermediaries;

(o) to prohibit insider trading in commodity derivative;

(p) to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified;

(q) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.".

7. In section 4A of the principal Act, in sub-section (3),—

(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

5 of 1898.

2 of 1974.

(b) for the word and figures "section 482", the word and figures "section 346" shall be substituted.

Amendment
of section 4A.

8. After section 4A of the principal Act, the following sections shall be inserted, namely:—

"**4B.** Save as otherwise provided in section 4, if after making or causing to be made an inquiry, the Commission is satisfied that it is necessary, in the interest of trade and orderly development of commodity derivatives market, it may, issue directions to any intermediary or association.

4C. If the Commission finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act or any rules or regulations made thereunder, the Commission may pass an order requiring such person to cease and desist from committing or causing such violations."

9. After Chapter II of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIIA

FINANCE, ACCOUNTS AND AUDIT

4D. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

4E. (1) There shall be constituted a Fund to be called the Forward Markets Commission General Fund and there shall be credited thereto—

Insertion of new sections 4B and 4C.

Power to issue directions by Commission.

Cease and desist proceedings.

Insertion of new Chapter IIIA.

Grants by Central Government.

Fund.

(i) all grants and fees received by the Commission under this Act;

(ii) all sums received by the Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(i) the salaries, allowances and other remuneration of the members, officers and other employees of the Commission;

(ii) the expenses of the Commission in the discharge of its functions under section 4;

(iii) the expenses on objects and for purposes authorised by this Act:

Provided that the sums authorised to be paid and applied from and out of the Consolidated Fund of India and appropriated by law made by Parliament for the services and purposes of the Commission shall continue to be paid and applied for such services and purposes of the Commission till the Fund is constituted under this section.

4F. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the

audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”.

Amendment
of section 5.

10. In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(ii) for the words "Central Government", the word "Commission" shall be substituted;

(b) in sub-section (2), for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(c) the following proviso shall be inserted at the end, namely:—

"Provided that the applications made to the Central Government, on or before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008 and pending with the Central Government on such date, shall be transferred to the Commission and thereafter the Commission shall dispose of such applications in accordance with the provisions of this Act.".

Amendment
of section 6.

11. In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "Central Government", the word "Commission" shall be substituted;

(ii) for the words "the goods or classes of goods with respect to which forward contracts may be entered", the words "the goods or classes of goods or commodity derivative or classes of commodity derivatives with respect to which forward contracts or options may be entered" shall be substituted;

(b) in sub-section (2),—

(i) for the words "Central Government", at both the places where they occur, the word "Commission" shall be substituted;

(ii) in clause (b), for the words "of not more than three persons", the words "such number of persons as the Commission may, having regard to the interest of trade in commodities and commodities derivatives, specify," shall be substituted;

(c) in sub-section (3), for the words "Central Government", the word "Commission" shall be substituted;

(d) after sub-section (4), the following proviso shall be inserted, namely—

"Provided that the recognition granted by the Central Government, before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act.".

Substitution of
new sections
for section 7.

12. For section 7 of the principal Act, the following sections shall be substituted, namely:—

'7. (1) If the Commission is of opinion that any recognition granted to an association under the provisions of this Act should, in interest of the trade or in the public interest, be withdrawn, the Commission may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification, the recognition granted to the said association:

Withdrawal of
recognition.

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract outstanding on that date.

(2) Where the recognised association has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 7B within the specified time therefor or the scheme has been rejected by the Commission under sub-section (5) of section 7B, the recognition granted to such association under section 6, shall, notwithstanding anything contained contrary to any other provision of this Act, stand withdrawn and the Commission shall publish, by notification, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may, after consultation with the association, make such provisions as it deems fit, in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 7B.

7A. On and from the appointed date, all recognised associations (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 7B:

Provided that different appointed dates may be appointed for different recognised associations:

Provided further that the Commission may, if it is satisfied that any recognised association was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, extend the appointed date specified in respect of that recognised association and such recognised association may continue as such before such appointed date.

Explanation.—For the purposes of this section, "appointed date" means the date which the Commission may, by notification, appoint.

7B. (1) All recognised associations referred to in section 7A shall, within such time as may be specified by the Commission, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Commission may, by notification, specify name of the recognised association, which had already been corporatised and demutualised, and such association shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Commission may, after making such inquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade in goods or commodity derivatives and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Commission if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised association or payment of dividends to members have been proposed out of any reserves or assets of that association.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

(a) the Commission in the Official Gazette;

(b) the recognised association in such two daily newspapers circulating in India, as may be specified by the Commission,

and upon such publication, notwithstanding anything contained contrary to any other provision of this Act or in any other law for the time being in force or any agreement,

Corporatisation
and
demutualisation
of
associations.

Procedure for
corporatisation
and
demutualisation.

award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised association and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised association or its members.

(5) Where the Commission is satisfied that it would not be in the interest of the trade in goods or commodity derivatives and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Commission shall give a reasonable opportunity of being heard to all the persons concerned and the recognised association concerned before passing an order rejecting the scheme.

(6) the Commission may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also members of the recognised association;

(b) the right of shareholders or a member of the recognised association to appoint the representatives on the governing board of the association;

(c) the maximum number of representatives of the members of the recognised association to be appointed on the governing board of the association, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have full effect.

1 of 1956.

(8) Every recognised association, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2) shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Commission, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Commission may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months."

13. In section 8 of the principal Act,—

(a) in sub-sections (1) and (2) for the words "Central Government" wherever they occur, the words "Central Government or Commission" shall respectively be substituted;

(b) in sub-section (2), in clause (c), for the words "direct the Commission", the words "direct any agency or any of its officers" shall be substituted;

(c) in sub-section (3), for the word "inquiry" wherever it occurs, the words "inquiry or inspection" shall be substituted.

14. In section 9A of the principal Act, in sub-section (2),—

(a) for the words "Central Government" wherever they occur, the words "Central Government or Commission" shall be substituted;

(b) for the words "that Government", the words "that Government or Commission" shall be substituted.

Amendment
of section 8.Amendment
of section 9A.

G. S. I. C. O.

15. For section 10 of the principal Act, the following sections shall be substituted, namely:—

"10. (1) Whenever the Commission considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(2) If any recognised association, against whom an order is issued by the Commission under sub-section (1), fails or neglects to comply with such order within the specified period, the Commission may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Commission may think fit.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force, as if they had been made or amended by the recognised association concerned.

1 of 1956. 10A. (1) A recognised association may, with the prior approval of the Commission, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purposes of—

- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, goods;
- (c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Commission for its approval.

(3) The Commission may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B and 13 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised association."

16. In section 11 of the principal Act,—

Amendment
of section 11.

(a) in sub-section (1),—

(i) for the words "Central Government", the word "Commission" shall be substituted;

(ii) for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(b) in sub-section (2), after the word "goods" wherever it occurs, the words "or forward contracts or option in goods or option in commodity derivative" shall be inserted;

(c) in sub-section (3), in clause (aa), for the brackets, figure and letter "(3A)", the brackets and figure "(4)" shall be substituted;

(d) in sub-section (4) and the proviso, for the words "Central Government" at both the places where they occur, the word "Commission" shall be substituted.

Substitution of
new sections
for section 10.

Power of
Commission
to direct rules
to be made or
to make rules.

Clearing
corporation.

Substitution of new sections for sections 12 and 12A.

Power of Commission to make or amend bye-laws of recognised association.

17. For sections 12 and 12A of the principal Act, the following sections shall be substituted, namely:—

"12. (1) The Commission may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and shall thereupon have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Commission on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Commission for a revision thereof, and the Commission may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or amendment or revision of any bye-laws under this section shall in all cases be subject to such conditions in regard to the previous publications as may be prescribed:

Provided that the Commission may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

Application of amendment of bye-laws to existing forward contracts or option in goods or option in commodity derivative.

Amendment of section 12B.

12A. Any amendment of a bye-law made under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts or option in goods or option in commodity derivative entered into before the date of its approval by the Commission or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.".

18. In section 12B of the principal Act,—

(a) in sub-section (1),—

(i) for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(ii) the words "of any goods or class of goods" shall be omitted;

(iii) after the words "any such contract", the words "or option in goods or option in commodity derivatives" shall be inserted;

(b) in sub-section (3), for the words "forward contract" at both the places where they occur, the words "forward contract or option in goods or option in commodity derivative" shall be substituted.

19. For section 13 of the principal Act, the following section shall be substituted, namely:—

"13. (1) Without prejudice to any other powers vested in the Commission under this Act, where the Commission is of the opinion that the governing body of any

Substitution of new section for section 13.

Power of Commission to supersede governing body of recognised association.

recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed, may appoint one of such persons to be the chairman and another of such person to be the vice-chairman.

(2) On the publication of a notification under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Commission may, from time to time, by like notification, vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1), shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall vest or revest, as the case may be, in the governing body so reconstituted.”

20. In section 14 of the principal Act, for the words "Central Government" at both the places where they occur, the word "Commission" shall be substituted.

Amendment
of section 14.

21. For Chapter IIIA of the principal Act, the following Chapter shall be substituted, namely:—

Substitution of
new Chapter
for Chapter
IIIA.

"CHAPTER IIIA

REGISTRATION OF MEMBERS AND INTERMEDIARIES

14A. (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, no person intending to act as a member or intermediary shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration granted by the Commission in accordance with the regulations made under this Act.

Registration
of members
and
intermediaries.

(2) A person, who in his capacity as a member or intermediary intends to deal in forward contract or option in goods or option in commodity derivative shall make an application for a certificate of registration to the Commission in such form alongwith such fee and containing such particulars as may be provided by regulations:

Provided that a person who was acting as a member or intermediary, before the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, may continue to do so for a period of six months from the date of such commencement if he has made an application for registration within the said period of six months, till the disposal of such application, whichever is later:

Provided further that the Commission may, by regulations, specify different fees for a class or classes of members or intermediaries on the basis of turnover of the business of such members or intermediaries.

(3) No foreign participant or foreign intermediary association with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Act:

Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Act, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealing or in case no such rules have been made until permitted as such by the Commission by notification.

(4) On receipt of an application under sub-section (2), the Commission may, after making such inquiry as it considers necessary in this behalf, by order in writing, grant a certificate of registration on such terms and conditions as may be specified by regulations or refuse to grant such certificate:

Provided that, before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14B. The Commission may, by order, suspend or cancel the certificate of registration in such manner as may be provided by regulations:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter."

22. For sections 15, 16 and 17 of the principal Act, the following sections shall be substituted, namely:—

"**15.** (1) Subject to the provisions contained in sections 17 and 18, every forward contract, entered into otherwise than between members of a recognised association or through or with any such member, shall be illegal.

(2) Any forward contract entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void—

(a) as respects the rights of any member of the recognised association who has entered into contract in contravention of any such bye-law and also,

(b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

Suspension or cancellation of certificate of registration.

Substitution of new sections for sections 15, 16 and 17.

Forward contracts illegal or void in certain circumstances.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) Any forward contract entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of section 11 shall be illegal.

(5) No member of a recognised association shall enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the forward contract, as the case may be, on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws, the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, forward contract or option in goods or option in commodity derivative, as the case may be, on his own account.

16. Notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

Consequences of contravention of section 15.

(a) every forward contract entered into on or before the date of commencement of the Forward Contracts (Regulation) Amendment Act, 2008, and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Commission may fix in this behalf and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. (I) The Central Government may, by notification, declare that no person shall, save with the permission of the Central Government, deal in any forward contract or option in goods or option in commodity derivative specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts or options in goods or options in commodity derivative in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts and options in goods for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date.".

Power to prohibit forward contract or options in goods or option in commodity derivative.

Amendment
of section 18.

23. In section 18 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "non-transferable specific delivery contracts", the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted;

(ii) in the proviso, for the words "non-transferable specific delivery contract", the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3) for the words "non-transferable specific delivery contracts" at both the places where they occur, the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted.

Substitution of
new section
for section 19.

24. For section 19 of the principal Act, the following section shall be substituted, namely:—

"19. (1) Any option in goods or option in commodity derivative which has been entered into on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, otherwise than between members of a recognised association or through or with any such member shall be illegal.

(2) The provisions of sub-sections (2), (3), (4) and (5) of section 15 shall apply to options in goods or option in commodity derivative as they apply in relation to a forward contract."

Option in
goods or
option in
commodity
derivative
illegal in
certain
circumstances.

25. In section 20 of the principal Act,—

(i) in clause (a) in sub-clause (iii), for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(ii) clause (b) shall be omitted;

(iii) in clause (c), for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(iv) after clause (d), the following clause shall be inserted, namely:—

"(da) fails to make or accept delivery of goods covered by non-transferable specific delivery contracts or by transferable specific contracts where rights and obligations have not been transferred, as the case may be; or";

(v) for clause (e), the following clause shall be substituted, namely:—

"(e) enters into any forward contract or option in goods or option in commodity derivative in contravention of any of the provisions contained in sub-section (1) or sub-section (4) or sub-section (5) of section 15 or section 17 or section 19;";

(vi) after the words "shall, on conviction, be punishable—" occurring below clause (e),—

(A) in clause (i), for the words "one thousand rupees", the words "twenty-five thousand rupees but which may extend to twenty-five lakh rupees" shall be substituted;

(B) in clause (ii),—

(i) for the words, brackets and letter "under clause (d)", the words, brackets and letters "under clause (d) or under clause (da)" shall be substituted;

Amendment
of section 20.

(II) for the words "one thousand rupees", the words "twenty-five thousand rupees" shall be substituted.

26. In section 21 of the principal Act,—

(i) in clauses (a) to (f), for the words "forward contracts" wherever they occur, the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(ii) in clause (g), for the words and figures "in respect of goods to which the provisions of section 15 have been made applicable", the words "in respect of goods or option in goods or option in commodity derivative" shall be substituted;

(iii) for clause (h), the following clause shall be substituted, namely:—

"(h) manipulates or attempts to manipulate prices in respect of forward contracts or option in goods or option in commodity derivative;"

(iv) after the words "shall, on conviction, be punishable—" occurring below clause (h), in clauses (i) and (ii), for the words "one thousand rupees", the words "twenty-five thousand rupees but which may extend to twenty-five lakh rupees" shall be substituted.

27. For section 21A of the principal Act, the following sections shall be substituted, namely:—

"21A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Commission, fails to furnish the same, he shall be liable to a penalty of twenty thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file or furnish the same within the time specified therefor in the regulations, he shall be liable to pay a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of ten thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(d) or who was in charge of, and was responsible to, an association for the conduct of the business of the association, obstructs any officer of the Commission or any other person authorised by it to conduct inspection or to discharge any other function assigned by the Commission, such person as well as the association shall be liable to pay a fine of rupees one lakh for every occasion of such obstruction.

21B. If any person, who is registered as a member or an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of twenty thousand rupees for each such failure during which such failure continues or five lakh rupees, whichever is less.

21C. If any person, who is registered as a member or an intermediary, after having been called upon by the Commission in writing to redress the grievances of clients, fails to redress such grievances within the time specified by the Commission, he shall be liable to a penalty not exceeding two thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

Amendment
of section 21.

Substitution of
new sections
for section
21A.

Penalty for
failure to
furnish
information,
return, etc.

Penalty for
failure by any
person to
enter into an
agreement
with clients.

Penalty for
failure to
redress clients'
grievances.

Penalty for insider trading.

21D. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for fraudulent and unfair trade practices.

21E. If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for default in case of an intermediary.

21F. If any person, who is registered as an intermediary under this Act or any regulations made thereunder,—

(a) fails to issue contract notes in the form and manner specified by the association of which such intermediary is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that intermediary;

(b) fails to deliver any goods or fails to make payment of the amount due to the client or in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified by the association, he shall be liable to a penalty of five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Penalty for failure to comply with directions of Commission.

21G. Any person, who fails to comply with the directions issued by the Commission under section 4B, shall be liable to pay a penalty not exceeding two lakh rupees for each day during which such failure continues but which shall not exceed five lakh rupees.

Consequences of failure to pay penalty.

21H. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine or with both.

Power to adjudicate.

21-I. (1) For the purposes of adjudging under sections 21A to 21G, the Commission shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

21J. While adjudging the quantum of penalty under section 21-I, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to a client or group of clients as a result of the default;
- (c) the repetitive nature of the default.

21K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Factors to be taken into account by adjudicating officer.

Crediting sums realised by way of penalties to Consolidated Fund of India.

21L. Any court trying an offence punishable under this Act, may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.

Power of court to order forfeiture of property.

Explanation.—For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.”.

28. In section 22A of the principal Act,—

Amendment of section 22A.

(a) in sub-section (1),—

(i) after the words "forward contracts or option in goods", the words "or option in commodity derivative" shall be inserted;

(ii) after the words "forward contract or option in goods", the words "or option in commodity derivative" shall be inserted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) The Commission may, notwithstanding anything contained in this Act, file cases in respect of offences committed under this Act, directly to the courts having jurisdiction in respect of such offences.”.

29. In section 22B of the principal Act, in sub-section (1), after the words "or option in goods", the words "or option in commodity derivative" shall be inserted.

Amendment of section 22B.

Insertion of
new section
22C.

Investigation.

30. After section 22B of the principal Act, the following section shall be inserted, namely:—

"**22C.** (1) Where the Commission has reasonable grounds to believe that—

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon to the Commission.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 14A, every person associated with the commodities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with commodities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with commodities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any books, registers, other documents and record if they are needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (7), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with commodities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

1 of 1956.

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one lakh rupees, or with both, and also with a further fine which may extend to twenty thousand rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with commodities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority—

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, as it considers necessary for the purposes of the investigation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, form whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures made under that Code.”.

2 of 1974.

31. In section 23 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(e) an offence falling under section 21H.”.

Amendment
of section 23.

32. In Chapter V of the principal Act, after section 24, the following section shall be inserted, namely:—

“24A. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under this Act to determine and no injunction

Insertion of
new section
24A.

Civil court not
to have
jurisdiction.

shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”.

33. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of
new Chapter
VA

Appeal to
Appellate
Tribunal.

‘CHAPTER VA

JURISDICTION AND AUTHORITY OF APPELLATE TRIBUNAL

24B. (1) Save as provided in sub-section (2), any person aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2008, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicating officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

(5) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(6) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned authority whose order has been appealed against.

(7) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Right to legal
representation.

24C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Explanation—For the purposes of this section,—

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

36 of 1963.

24D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to the Appellate Tribunal. Limitation.

24E. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order: Appeal to Supreme Court.

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.'

34. After section 26 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 26A, 26B, 26C, 26D, 26E and 26F.

"26A. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

26B. (1) If at any time the Central Government is of the opinion—

(a) that on account of grave emergency, the Commission is unable to discharge the functions and perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made wilful default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and performed the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

Power of Central Government to issue directions.

Power of Central Government to supersede Commission.

(c) all property owned or controlled by the Commission shall, until the Commission is reconstituted, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Commission by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for such appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Returns and reports.

26C. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the commodities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, within ninety days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Delegation.

26D. The Commission may, by general or special order in writing, delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 28) as it may deem necessary.

Bar of jurisdiction.

26E. No order passed by the Commission or the adjudicating officer under this Act shall be appealable except as provided in section 24B and no civil court shall have jurisdiction in respect of any matter which the Commission or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Commission or the adjudicating officer by, or under, this Act.

Members, officers and employees of Commission to be public servants.

26F. All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

Insertion of new section 27B.

35. After section 27A of the principal Act, the following section shall be inserted, namely:—

Exemption from tax on wealth and income.

“27B. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.”.

27 of 1957.

43 of 1961.

36. In section 28 of the principal Act, in sub-section (2),—

Amendment
of section 28.

- (i) clause (cc) shall be omitted;
- (ii) for clause (g), the following clauses shall be substituted, namely:—

"(g) the duties and powers which may be performed or exercised by the Commission under clause (g) of section 4;

(h) the form and manner in which the annual statement of accounts shall be maintained under sub-section (1) of section 4F;

(i) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A;

(j) the manner in which an inquiry shall be held under sub-section (1) of section 21-I;

(k) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24B and the fees payable in respect of such appeal;

(l) the form and the manner in which returns and report to be made to the Central Government under section 26C;

(m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.".

37. After section 28 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
28A and 28B.

"28A. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Commission and the procedure to be followed at such meetings under section 3D including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H;

(c) the manner in which the fresh issue of equity shares shall be made to the public under sub-section (8) of section 7B;

(d) the conditions of certificate of registration to act as a member or intermediary to deal with forward contract or option in goods or option in commodity derivative under sub-section (1) of section 14A;

(e) the fee for a class or classes of member or intermediary under the second proviso to sub-section (2) of section 14A;

(f) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A;

(g) the manner in which the certificate of registration may be suspended or cancelled under section 14B;

(h) any other matter relating to trading, clearing, settlement, and delivery of goods, forward contact, option in goods or option in commodity derivative.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, that regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Application of other laws not barred.

28B. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”.

CHAPTER III

AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment of section 15U of Act 15 of 1992.

38. In section 15U of the Securities and Exchange Board of India Act, 1992, in subsection (2), for the words "under this Act", the words "under this Act or any other law for the time being in force" shall be substituted.

Repeal and saving.

39. (1) The Forward Contracts (Regulation) Amendment Ordinance, 2008, is hereby repealed.

Ord. 3 of 2008.

(2) Notwithstanding such repeal, anything done or any action taken under the Forward Contracts (Regulation) Act, 1952 and the Securities and Exchange Board of India Act, 1992, as amended by the said Ordinance, shall be deemed to have been done or taken under the said Acts, as amended by this Act.

74 of 1952.
15 of 1992.

G.K. 10/01

STATEMENT OF OBJECTS AND REASONS

The Forward Contracts (Regulation) Act, 1952 was enacted to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

2. In view of the rapid acceleration of growth in commodity futures market in the past five years there has been an imperative and urgent need for putting in place an updated and effective regulatory system. The volumes of these markets have grown very rapidly from rupees one lakh twenty-nine thousand crores in 2003-04 to rupees thirty-six lakh seven thousand crores in 2006-07. During the current financial year (till January, 2007), the volumes traded on the commodity exchanges have been rupees thirty-one lakh sixty thousand crores. The markets have been liberalised with effect from April, 2003 and three national level multi-commodity exchanges with modern trading facilities have also been set up. The Forward Markets Commission, market regulator, however did not have the requisite legislative framework to properly manage the rapid growth in this sector. Administrative autonomy and financial autonomy needed to be given to the Forward Markets Commission urgently. This necessitated changes in the organisational structure and institutional capacity of the Forward Markets Commission. The Central Government, therefore, decided to restructure and strengthen the Forward Markets Commission broadly on the lines of the Securities and Exchange Board of India, reinforce the penalty provisions, provide for investigation, adjudication and appeal and make some other necessary amendments in the Forward Contracts (Regulation) Act, 1952 for the said purpose.

3. To give effect above proposals, a Bill to amend the Forward Contracts (Regulation) Act, 1952 was introduced in Lok Sabha on the 21st March, 2006 and the same was referred to the Standing Committee on Food, Consumer Affairs and Public Distribution for examination and report. The Standing Committee gave its Report on 19th December, 2006. The Government considered the recommendations of the Committee. Furthermore, wider consultations were held with the stake-holders. Keeping in view the fact that the issue related to financial and market integrity, there was urgency to bring the proposed legislation. Therefore, an Ordinance namely, the Forward Contracts (Regulation) Amendment Ordinance, 2008 was promulgated by the President on 31st January, 2008. The Government has also decided to withdraw the Forward Contracts (Regulation) Amendment Bill, 2006 pending before Lok Sabha.

4. The Forward Contracts (Regulation) Amendment Ordinance, 2008, *inter alia*, provided for—

(a) amendment to the definition of the expression "forward contract" so as to include therein "commodity derivative" and also insert new expressions such as "commodity derivative", "corporatisation", "demutualisation" and "intermediary", etc.;

(b) increase in the maximum number of members of Forward Markets Commission from four to nine out of which three to be whole-time members and a Chairman;

(c) provisions to confer power upon the Forward Markets Commission to levy fees;

(d) constitution of Forward Markets Commission General Fund to which all grants, fees and all sums received by the Forward Markets Commission shall be credited except penalty and apply the funds for meeting the expenses of the Commission;

(e) provisions to confer power upon the Central government to issue directions to the Forward Markets Commission on the matter of policy and to supersede the Forward Markets Commission in certain cases;

- (f) corporatisation and demutualisation of recognised associations in accordance with the scheme to be approved by the Forward Markets Commission;
- (g) registration of members and intermediaries;
- (h) provisions to allow trading in options;
- (i) investigation, enforcement and penalty in case of contravention of the provisions of the said Act;
- (j) appeals, from the order of the Forward Markets Commission and adjudicating officer to the Securities Appellate Tribunal for the purposes of said Act and from the order of the Securities Appellate Tribunal to the Supreme Court;
- (k) transfer of the duties and functions of a clearing house to a clearing corporation; and
- (l) exemption from payment of tax on wealth, income and profits or gains of Forward Markets Commission.

5. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

The 29th February, 2008.

SHARAD PAWAR.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117
AND 274 OF THE CONSTITUTION OF INDIA**

[Copy of letter No. 20/2/2008-IT/407 dated the 25th February, 2008 from Shri Sharad Pawar, Minister of Agriculture and Consumer Affairs, Food and Public Distribution to the Secretary-General Lok Sabha.]

The President, having been informed of the subject matter of the proposed Forward Contracts (Regulation) Amendment Bill, 2008 recommends to the House the introduction under articles 117(1) and 274(1) and consideration of the Bill under article 117(3) of the Constitution.

Notes on clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause seeks to amend the long title of the Forward Contracts (Regulation) Act, 1952.

Clause 3.—This clause seeks to amend section 2 of the principal Act, so as to amend the definitions of "associations", "forward contract", "ready delivery contracts" and "specific delivery contracts". It further seeks to define the expressions "Appellate Tribunal", "Chairman", "commodity derivative", "corporatisation", "demutualisation", "Fund", "intermediary", "member", "notification", "option in commodity derivative", "regulation" and "scheme".

Clause 4.—This clause seeks to amend section 3 of the principal Act, which relates to establishment of the Forward Markets Commission. It is proposed to substitute sub-sections (2), (3), (4) and (5) with a new sub-section (2) so as to confer upon the Forward Markets commission the status of a body corporate.

Clause 5.—This clause proposes to insert new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H in the principal Act. Section 3A provides provisions relating to management of the Forward Markets Commission, section 3B provides for the term of office and conditions of service of Chairman and members of the Commission, section 3C for removal of members from office, section 3D for meetings of the Commission, section 3E provides for vacancies, etc., not to invalidate proceedings of the Commission, section 3F contains provisions for members not to participate in meetings in certain cases, section 3G provides for bar on future employment of whole-time members and Chairman, section 3H provides for appointment of officers and employees of the Commission.

Clause 6.—This clause seeks to amend section 4 of the principal Act which relates to advise the Central Government in respect of matters arising out of the administration of this Act; to grant or withdraw recognition of any association; to undertake the inspection of the accounts and other documents of any member of such association or any intermediary; to regulate the business of associations; to regulate the functioning of members of the associations, clearing houses, warehouses and intermediaries; to levy fees for carrying out the purposes of the Act; to conduct research for the purpose of development and regulation of commodity derivatives markets; to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions; to protect the interests of the market participants in commodity derivatives markets; to promote and regulate self-regulatory organisation; to prohibit fraudulent and unfair trade practices relating to commodity derivatives markets; to promote investors' education and training of intermediaries; to prohibit insider trading in commodity derivative; to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified; and to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

Clause 7.—This clause seeks to amend sub-section (3) of section 4A of the principal Act to substitute "the Code of Criminal procedure, 1973" which is of consequential nature in view of the amendment of the said Code.

Clause 8.—This clause seeks to insert new sections 4B and 4C in the principal Act. It provides for conferring power upon the Forward Markets Commission to issue directions to any intermediary or association in the interest of trade and orderly development of commodity derivatives market by the Commission.

Section 4C proposes to confer power upon the Forward Markets Commission to pass an order requiring any person to cease and desist from committing or causing any violation of the provisions of the principal Act or rules or regulations made thereunder.

Clause 9.—This clause proposes to insert a new Chapter IIA in the principal Act. The proposed section 4D of the said chapter provides for grants by the Central Government to the Forward Markets Commission and that such grants shall be made after due appropriation made by Parliament by law, section 4E contains provisions for constitution of a Fund, to be called the Forward markets commission General Fund which all grants, fees and charges, etc., received by the Forward Markets Commission shall be credited and also the provisions for application of the Fund, section 4F contains provisions for maintenance of proper accounts and other relevant records and annual statement of accounts by the Forward Markets Commission and for audit of accounts by the Comptroller and Auditor General of India.

Clause 10.—This clause seeks to amend section 5 of the principal Act relating to application for recognition of associations. Under the existing provisions contained in the said section 5, trading in forward contracts by the association is allowed if such association recognised.

Since option in goods or option in commodity derivative are being permitted, it is proposed to extend the scope of trading in options by such associations.

Under the existing provisions, the applications for recognition of associations are required to be made to the Central Government. The proposed amendment further seeks to provide that such applications shall, after the commencement of the proposed amendments, be made to the Forward Markets Commission.

A transitory provision is also proposed to be made for transfer of such applications with the Central Government to the Commission.

Clause 11.—This clause seeks to amend section 6 of the principal Act, which proposes to confer power upon the Forward Markets Commission to grant recognition to association.

A validation provision is also proposed to be made for recognitions already granted to associations by the Central Government before commencement of this Act.

Under the existing provisions, recognition to the association is granted by the Central Government, it is, *inter-alia*, proposed to confer power upon the Froward Markets Commission to grant recognition to the association. A validation provision is also proposed to be made for recognitions already granted to associations by the Central Government before commencement of this Act.

Clause 12.—This clause seeks to substitute section 7, by new sections 7, 7A and 7B, in the principal Act, which relates to provide for the withdrawal of recognition, corporatisation and demutualisation of associations and the procedure for corporatisation and demutualisation.

Under the existing provisions, the Central Government has been conferred power to withdraw recognition of an association. Section 7 seeks to confer power upon the Forward Markets Commission instead of the Central Government to withdraw recognition granted to an association. Section 7A contains provisions for corporatisation and demutualisation of associations wherein trading of commodities and commodity derivative is conducted or may be carried out. Section 7B relates to procedure for the corporatisation and demutualisation of the associations.

Clause 13.—This clause seeks to amend section 8 of the principal Act which confers power on the Central Government and the Forward Markets Commission to call for periodical returns or to direct inquiries to be made.

Clause 14.—This clause seeks to amend sub-section (2) of section 9A of the principal Act, to confer powers on the Central Government and Forward Markets Commission to approve the rules made by the recognised association.

Clause 15.— This clause seeks to substitute section 10 of the principal Act by new sections 10 and 10A which confers power on the Commission to direct rules to be made or to make rules and relating to clearing corporation.

The existing provisions contained in section 10 confer power upon the Central Government to direct rules to be made by an association or to amend rules made by it. It is proposed to confer the said power upon the Forward Markets Commission. It is also proposed to insert a new section 10A to provide for the transfer of the duties and functions of a clearing house to a clearing corporation and that the clearing corporation is required to make bye-laws for the purpose of transfer of said duties and functions and submit the same to the Forward Markets Commission for its approval.

Clause 16.— This clause seeks to amend section 11 of the principal Act, relating to power of recognised associations to make bye-laws.

Under the existing provisions, the recognised associations can make bye-laws for the regulation and control of forward contracts subject to the previous approval of the Central Government.

It is also proposed to confer the said powers upon the Forward Markets Commission and also to extend the scope of the said section to option in goods or option in commodity derivative.

Clause 17.— This clause seeks to substitute sections 12 and 12A of the principal Act by new sections which confers power on the Commission to make or amend bye-laws of recognised association and application of amendment of bye-laws to existing forward contracts.

The existing provisions contained in section 12 confer powers upon the Central Government to make or amend bye-laws of recognised associations. It is also proposed to confer the said power upon the Forward Markets Commission.

The existing provisions contained in section 12A provides for application for amendment of bye-laws to the existing forward contracts. It is further proposed to extend the scope of the said section to the option in goods or option in commodity derivative also.

Clause 18.— This clause seeks to amend section 12B of the principal Act which confers power on the Commission to suspend the member of a recognised association or to prohibit him from trading. It is proposed to extend the scope of the said section to include trading in option in goods or option in commodity derivative to enable the commission to suspend members of associations who are trading in option in goods or option in commodity derivative in addition to forward contracts.

Clause 19.— This clause seeks to substitute section 13 of the principal Act to confer power on the Central Government to supersede governing body of recognised association. It is proposed to confer the said power upon the Forward Markets Commission.

Clause 20.— This clause seeks to amend section 14 of principal Act to confer power on the Forward Markets Commission to suspend business of recognised associations.

Clause 21.— This clause proposes to substitute Chapter IIIA by a new Chapter with sections 14A and 14B in the principal Act to provide for registration of members.

Section 14A proposes to require the members and intermediaries to register with the Forward Markets Commission. Section 14B confers power upon the Forward Markets Commission to suspend or cancel the certificate of registration.

Clause 22.— This clause seeks to substitute section 15 of the principal Act by new section 15 which provides the circumstances in which the forward contracts are illegal or void. It is proposed to substitute said section 15 by a new section so as to do away with the requirement of issuing the notifications in respect of forward contract.

It is proposed to make forward contract illegal or void unless organised under the aegis of recognised association except under section 17 (power of the Central Government to prohibit forward contracts or options in goods or option in commodity derivative) and section 18 (special provisions in respect of certain kinds of forward contracts).

This clause also proposes to substitute sections 16 and 17 of the Forward Contracts (Regulation) Act, 1952, relating to the consequences of contravention of section 15 and relating to power to prohibit forward contracts or option in goods or option in commodity derivative.

In view of the amendment in section 15 *vide* clause 22, the marginal heading of section 16 would require amendment and the power under section 16 is proposed to be conferred upon the Forward Markets Commission.

Under the existing provision contained in section 17, forward contracts in certain cases can be prohibited.

It is proposed to extend the scope of the said section 17 to the option in goods or option in commodity derivative and also make certain other minor amendments.

Clause 23.— This clause seeks to amend section 18 of the principal Act which relates to special provisions in respect of certain kinds of forward contracts (non-transferable specific delivery contracts and specific delivery contracts).

Under the existing provisions contained in section 18 non-transferable specific delivery contracts could be entered into in any area other than recognised associations.

It is proposed to amend sub-section (1) of the said section so as to bring specific delivery contracts (both transferable and non-transferable) within the scope of this section. The existing provisions contained in sub-section (2) of the said section confer power upon the Central Government to grant exemption to forward contracts relating to transferable specific delivery contract. Sub-section (2) of section 18 is proposed to be omitted. The omission of sub-section (2) is of consequential in nature.

Clause 24.— This clause seeks to substitute a new section for section 19 of the principal Act relating to option in goods or option in commodity derivative illegal or void in certain circumstances.

Under the existing provisions contained in section 19, trading in options in goods is prohibited.

It is proposed to substitute the said section 19 so as to allow trading in option in goods or option in commodity derivative.

Clause 25.— This clause seeks to amend section 20 of the principal Act, which relates to penalties. It is proposed to extend the scope of the section to options in goods or option in commodity derivative also in addition to forward contracts.

It is further proposed to extend the scope of the said section in cases of failure to make or accept delivery of goods under non-transferable specific delivery contracts or transferable specific delivery contracts of goods by inserting new clause (da) in the said section. Under the existing provisions, the monetary penalty for contravention of provisions of Chapter IV (forward contracts and option in goods) and option in commodity derivative is "one thousand rupees". It is also proposed to enhance the said monetary penalty to "twenty-five thousand rupees".

Clause 26.—This Clause seeks to amend section 21 of the principal Act, which relates to penalty for owning or keeping place used for entering into forward contracts in goods.

Under the existing provisions, penalty is provided in relation to entering into forward contracts in goods.

It is proposed to include in clauses (a) to (f) of the said section the options in goods or option in commodity derivative in addition to forward contracts. It is further proposed to enhance monetary penalty from "one thousand rupees" specified in the aforesaid section 21 to "twenty-five thousand rupees".

Clause 27.—This clause proposes to substitute section 21A of the principal Act, which relates to power of Court to order forfeiture of property by the new sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21-I, 21J, 21K and 21L.

Section 21A contains provisions for penalty relating to failure to furnish information, return, etc. Section 21B contains provisions for penalty relating to failure by any person to enter into an agreement with clients. Section 21C contains provisions relating to penalty for failure to redress clients' grievances. Section 21D contains provisions relating to penalty for insider trading. Section 21E contains provisions relating to penalty for fraudulent and unfair trade practices¹. Section 21F contains provisions relating to penalty for default in case of an intermediary. Section 21G contains relating to penalty for failure to comply with directives of the Commission. Section 21H contains provisions relating to consequences of failure to pay penalty. Section 21-I contains provisions relating to power to adjudicate. Section 21J contains provisions relating to factors to be taken into account by adjudicating officer. Section 21K contains provisions relating to crediting sums realised by way of penalties to Consolidated Fund of India. Section 21L contains provisions relating to power of court to order forfeiture of property. The contraventions for which the penalty is leviable (except under new section 21G) are broadly on the lines of the provisions contained in the Securities and Exchange Board of India Act, 1992 but the quantum of monetary penalty is different in the said new sections from the monetary penalties specified under the Securities and Exchange Board of India Act, 1992.

Clause 28.—This clause seeks to amend section 22A of the principal Act, which relates to power to search and seize books of account or other documents in the case of forward contracts or option in goods entered into in contravention of provisions of the Act. It is proposed to extend the scope of the said section to option in commodity derivative and gives reference of the Code of Criminal Procedure, 1898, which has been repealed and re-enacted as the Code of Criminal Procedure, 1973.

Clause 29.—This clause seeks to amend section 22B relating to presumption to be drawn in certain cases. It is proposed to extend the scope of this section to option in commodity derivative also.

Clause 30.—This clause seeks to insert a new section 22C in the principal Act, which relates to confer power upon the Forward Markets Commission to direct the Investigating Authority to investigate the affairs of intermediary or person associated with the commodity derivative market and to submit the report to the Forward Market Commission.

Clause 31.—This clause seeks to insert new clause (e) in section 23 of the principal Act, which specifies certain offences to be cognizable. It is proposed to insert reference of section 21H so as to make the offence specified in the proposed new section 21H (consequences of failure to pay penalty) cognizable.

Clause 32.—This clause seeks to insert new section 24A in the principal Act, which relates to bar the jurisdiction of the civil courts relating to any matter in respect of which the Adjudicating Officer or the Forward Markets Commission has the jurisdiction under the Act.

Clause 33.—This clause proposes to insert a new Chapter VA in the principal Act, which relates to jurisdiction, authority and procedure of Appellate Tribunal.

Section 24B contains provisions relating to appeal to the Appellate Tribunal. It is further provided that the Central Government shall, specify by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

Section 24C contains provisions for right to legal representation. Section 24D contains provisions for limitation. Section 24E contains provisions for appeal to the Supreme Court.

Clause 34.—This clause seeks to insert new sections 26A, 26B, 26C, 26D, 26E and 26F in the Act. Section 26A contains provision relating to power of the Central Government to issue directions. Section 26B contains provisions relating to power of the Central Government to supersede the Forward Markets Commission. Section 26C contains provisions relating to returns and reports to be furnished by the Forward Markets Commission. Section 26D contains provisions relating to delegation of powers by the Commission. Section 26E contains provisions relating to bar of jurisdiction. Section 26F contains provision relating to members, officers and employees of the Commission to be public servants.

Clause 35.—This clause proposes to insert new section 27B in the principal Act, which relates to exemption from tax on wealth, income, profits or gains of the Forward Markets Commission.

Clause 36.—This clause seeks to amend section 28 in the principal Act, which confers power upon the Central Government to make rules in respect of certain matters.

Clause 37.—This clause seeks to insert new sections 28A and 28B in the principal Act. Section 28A proposes to confer power upon the Forward Markets Commission to make regulations. The regulations to be made by the Forward Markets Commission shall be laid before both Houses of Parliament.

Section 28B provides that the provisions of the principal Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 38.—This clause seeks to amend section 15U of the Securities and Exchange Board of India Act, 1992. It is proposed to widen the scope of the said section to the matters arising out of the Forward Contracts (Regulation) Act, 1952. The proposed amendment is consequential in nature.

Clause 39.—This clause seeks to repeal the Forward Contracts (Regulation) Amendment Ordinance, 2008 and provides for saving of the action taken under the said Ordinance.

10/09/2011

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide that the Forward Markets Commission shall be a body corporate with powers to acquire, hold and dispose of property, both movable and immovable and to contract, etc. Clause 5 of the Bill seeks to insert a new section 3A for the appointment of the Chairman and eight other members. The proposed section 3B provides for the conditions of service of the Chairman and members of the Commission to be prescribed by rules made under the Act. The proposed section 3H provides for appointment of officers and other employees of the Commission and to provide for their conditions of service to be determined by regulations. Accordingly, the structure and infrastructure facility of the Commission will have to be suitably augmented and strengthened.

2. Clause 9 of the Bill seeks to insert a new Chapter IIA to the Act relating to Finance, Accounts and Audit. The proposed new section 4D provides for grants to the Commission by the Central Government by due appropriation made by Parliament. The new section 4E provides for a Fund to be called the Forward Markets Commission General Fund to which all grants, fees and all sums received by the Commission from such sources shall be credited as may be decided by the Central Government.

3. The expenditure involved in the operational expenses of the Forward Markets Commission including rent for additional premises, salary, etc., shall be rupees twenty-five crore for the year 2008-09, for acquiring and furnishing of new premises and part of the operational expenses shall be rupees sixty-five crore for the year 2009-10, for operational expenses and furnishing of new premises to the extent not met by revenue shall be rupees twenty-five crore for the year 2010-11 and operational expenses to the extent not met by revenue for the year 2011-12 shall be rupees five crore. Thus, an amount of rupees one hundred-twenty crores will be required as interest free loan as detailed above subject to the moratorium period of five years and repayment period of ten years of the expiry of moratorium period.

4. It is estimated that the Bill will not involve any other expenditure of recurring or non-recurring nature from the consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 36 of the Bill seeks to amend section 28 of the Forward Contracts (Regulation) Act, 1952. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate, *inter alia*, to provide for (i) the additional duties and powers that may be performed or exercised by the Commission under clause (q) of section 4; (ii) the form and manner in which the annual statement of accounts of the Commission shall be maintained under section 4F; (iii) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A; (iv) the manner of inquiry under clause (a) of section 21-I; (v) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24B and the fees payable in respect of such appeal; (vi) the form and the manner in which returns and report to be made to the Central Government under section 26C; (vii) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

2. Clause 37 of the Bill seeks to insert a new section 28A in the Forward Contracts (Regulation) Act, 1952. This clause empowers the Commission to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate, *inter alia*, to provide for (i) the times and places of meetings of the Commission and the procedure to be followed at such meetings under section 3D including quorum necessary for the transaction of business; (ii) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H; (iii) the manner in which the fresh issue of equity shares shall be made to the public, under sub-section (8) of section 7B; (iv) the form in which and the terms and conditions subject to which applications for certificates of registration may be made under sub-section (2) of section 14A and the levy of fees in support of such application; (v) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A; (vi) the manner in which the certificate of registration may be granted, suspended or cancelled under section 14B; (vii) any other matter relating to conduct of commodity derivatives including trading, clearing, settlement and delivery of goods, forward contracts, option in goods or option in commodity derivative.

3. The rules made by the Central Government and the regulations made by the Forward Markets Commission shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

P.D.T. ACHARY,
Secretary-General.